



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,450	01/27/2004	William A. Wiles	WILES-004	8592

7590 12/01/2009
DONALD J. LENKSZUS
PO BOX 3064
CAREFREE, AZ 85377-3064

EXAMINER

SUTTON, ANDREW W

ART UNIT	PAPER NUMBER
----------	--------------

3765

MAIL DATE	DELIVERY MODE
-----------	---------------

12/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/765,450	Applicant(s) WILES, WILLIAM A.	
	Examiner ANDREW W. SUTTON	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 7/27/09 have been fully considered but they are not persuasive. The applicant argues that the amended claims overcome the prior art due to the fact that the fabrics disclosed by Fleitman are all absorbent and water retentive. The examiner disagrees with this argument as Fleitman discloses the use of nylon which is quite hydrophobic. The attached reference of Hatch shows in Fig. 8.6 that nylon is hydrophobic. The applicant also further argues the Fleitman does not teach the fabric being a wicking fabric. Fleitman teaches (Col. 1 lines 51-64) the fabric transmits water to the absorbent core which indicates the act of wicking. Fleitman further teaches (Col. 3 line 31) that the cloth 12 is water transmissive, not water retentive, as the applicant argues. The amended claims fail to overcome the prior art.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fleitman (US 5,377,360). Fleitman teaches a sweatband having a hydrophilic foam core 14 and with a fabric with a cloth element 12 covering the foam core. Fleitman teaches that terry cloth (is commonly used as fabric for the sweatband which would provide

wicking properties. Fleitman further teaches the fabric 12 is water transmissive (ie. wicking). Fleitman teaches that cloth 12 is made of nylon, which is hydrophobic. Fleitman further teaches hook and loop fabric 22 for adjusting the size of the sweatband.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleitman (US 5,377,360) in view of Hermann (US 6,025,287). Fleitman discloses the invention substantially as claimed above. However, Fleitman does not teach the foam core resistant to bacteria or organisms. Hermann teaches the use of bactericide (see column 2, line 37) in articles of apparel for providing a bactericide to kill germs generated by body fluids. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Fleitman with the teachings of Fleitman to achieve the advantage of killing germs/organisms.

As to claim 4, Fleitman does not teach the foam comprising absorbent polymer crystals. Hermann teaches the use of super absorbent polymers equivalent to absorbent polymer crystals (see column 5, lines 39-64). It would have been obvious to ordinary skill in the art at the time of the invention to provide the foam core 14 of

Art Unit: 3765

Fleitman with the super absorbent polymers of Herman to achieve the advantage of increasing the capacity of the foam core to absorb sweat.

Claims 5-8, 10, 12-15, 17, 21, 23-26 30-33, 35 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallis (US 3,906,548) in view of Fleitman (US 5,377,360). Kallis teaches a helmet comprising a suspension 10 for being carried by the helmet body and an absorbent cushion, the cushion comprising a cushion portion 40 and an attachment portion 42 further including hook and loop fabric 43. Kallis does not teach the cushion portion comprising a hydrophilic foam core and a fabric covering said foam core. Fleitman teaches a sweatband having a hydrophilic foam core 14 and with a fabric with a cloth element 12 covering the foam core. Fleitman teaches that terry cloth (is commonly used as fabric for the sweatband which would provide wicking properties. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the cushion portion of Carrington for that Fleitman to achieve a like function of wicking sweat away. Kallis teaches the use of a plurality of strips 24 carrying hook portions 31 (see column 2, lines 1-22).

Claims 9, 11, 16, 18, 20, 22, 27-29, 36, 34, 38, and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Kallis (US 3,906,548) in view of Fleitman (US 5,377,360) in further view of Hermann (US 6,025,287). Kallis/ Fleitman does not teach the absorbent crystals. Hermann teaches the use of super absorbent polymers equivalent to absorbent polymer crystals (see column 5, lines 39-64). It would have been obvious to ordinary skill in the art at the time of the invention to provide the foam

core 14 of Fleitman with the super absorbent polymers of Herman to achieve the advantage of increasing the capacity of the foam core to absorb sweat.

As to claim 11, 18, 20, 29, 36, 38 Fleitman /Kallis does not teach the foam core resistant to bacteria or organisms. Hermann teaches the use of bactericide (see column 2, line 37). It would have been obvious to one of ordinary skill in the art at the time of the invention to achieve the advantage of killing germs/organisms.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is

Art Unit: 3765

(571)272-6093. The examiner can normally be reached on Monday - Thursday 6:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS
20 November 2009

/Shaun R Hurley/
Primary Examiner, Art Unit 3765